



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
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Ref: 8ENF-L

MEMORANDUM

SUBJECT: Access Order for Remedial Action at VB/I-70 Site

FROM: Karen S. Kellen
Enforcement Attorney

TO: Michael T. Risner, Director
Legal Enforcement Program

Sharon Kercher, Director
Technical Enforcement Program

DATE: August 22, 2006

Attached is an Administrative Order Directing Compliance with Request for Access for one property within the VB/I-70 Superfund Site. This property appears to be abandoned as neither the City and County of Denver nor EPA can find the listed property owners. The City has a tax certificate on the property and wants to take it in order to build affordable housing. The high levels of lead on the property have prevented the City from moving forward. I am recommending that we issue the attached Order to allow EPA to conduct the response action prior to Denver's acquisition of the property. The memo is to explain the unusual nature of the service for this Order.

I have issued the Order as an in rem action against the property itself. Service of the listed property owners has been futile as everything mailed to their address (the vacant lot) has been returned. We have posted a notice on the property itself and we ran a notice in both the Rocky Mountain News and the Denver Post for the last 2 weeks trying to alert the owner to our intentions. We have had no response from anyone claiming to be the owner of the property.

The Order will go into effect immediately so that the crew can begin remediation. The crew will be given a copy of the Order to have in their possession during the implementation of the action. They will be instructed to stop work and contact me immediately if anyone claims ownership and objects to the cleanup. The Order gives us 2 days to resolve the matter with a conference, but I expect that we can offer an immediate conference to avoid delays. We do not expect anyone to show up during the cleanup, but the terms of the Order should help with any due process issues that might be raised. The contractor is finishing the final properties this month so the Order needs to be issued immediately.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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FILED
EPA REGION VIII
HEADING CLERK

IN THE MATTER OF:

Vasquez Boulevard/Interstate 70 Site
Denver, CO

Mary & Joe Aragon

Action In Rem - 3802 Humoldt Street
Respondent

**ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR
ACCESS**

U.S. EPA Region 8

CERCLA Docket No. CERCLA-08-2006-0009

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

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I. JURISDICTION

1. This Administrative Order ("Order") is issued in rem to Mary and Joe Aragon or other unknown owners of 3802 Humoldt Street (hereinafter, "Respondent"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6, and further delegated to Directors of the Legal Enforcement and Technical Enforcement Programs, Office of Enforcement, Compliance and Environmental Justice.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its authorized representatives entry and access to the property described in Paragraph (4) below ("the Property") located in Denver, Colorado for the purpose of conducting remedial action activities at 3802 Humoldt Street within the Vasquez Boulevard/Interstate 70 Site (the "Site"). This Order further requires Respondent to refrain from interfering with access to the Property by EPA and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

3. The Humboldt property in Denver, Colorado is within the Study Area designated for investigation at the Site. The City and County of Denver property records indicate that Joe and Mary Aragon were the last known owners of said property. The City and County of Denver (the "City") has tax certificate number P#02233-18-004-000 on this property. The City has not taken title to this property due to concerns about potential contamination from the Site. The property is intended for future residential use.

4. The property is a vacant lot towards the middle of the 3800 and 3900 blocks of Humboldt Street, in the City of Denver, Colorado. The property is commonly referred to as either 3802 Humboldt or 3930 Humboldt and is located within the Cole neighborhood.

5. The Site is listed on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

6. EPA proposed the Site for listing on the NPL in 1999. In September, 2003 EPA and CDPHE issued a Record of Decision for the Site. The selected remedy called for additional sampling of all residential property within the study area and soil removal of yards found to exceed the clean up levels of 400 ppm lead and 70 ppm arsenic. The study area included the Denver neighborhoods of Swansea, Elyria, Clayton, Cole, southwest portion of Globeville, and the northern portion of Curtis Park.

7. The property on Humboldt Street was sampled and found to have 1610 ppm of lead, well in excess of the clean up level of 400 ppm lead.

8. To address the release or threatened release of a hazardous substance or pollutant

or contaminant at the Site, EPA is conducting certain response actions. These actions include the removal of the top 12 inches of soil from properties that have lead and/or arsenic contamination above the action levels.

9. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to immediately enter the Humboldt property. Entry is required to conduct a soil removal consisting of the removal of 12 inches of soil, replacing it with 12 inches of clean fill.

10. EPA estimates that the duration of the required entry and access will be approximately two days. EPA anticipates completion of all activities by September 30, 2006.

11. EPA has tried repeatedly to contact the listed owner to obtain access, but has received no response. The owners address is listed as the vacant property at 3802 Humboldt St. Searches for the owners have not provided additional information about the location of these individuals. EPA posted a notice of its intent to sample the property on the actual property. EPA has run a notice in the classified ads of both major Denver newspapers for the last two weeks with notice of its intent to conduct this response action. The City and County of Denver has a tax certificate on the property for failure to pay taxes. The City intends to take possession of this property upon completion of the work. The City, while not the current owner of the property, consents to EPA's access.

12. EPA and its contractors are ready to conduct the response action, but is prevented from so doing because of the owner's apparent abandonment of the property. EPA intends to complete all soil removal activities by the end of September, 2006. Failure to take action now will result in this property being left as a potential hazard in the community.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

13. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
14. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
15. All of the substances listed in Paragraph 6 and 7 above are hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(23) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(23).
16. Based on the information provided in Paragraphs 6 and 7 of this Order, EPA has a reasonable basis to believe that there may be a release or threat of release of a hazardous substance or pollutant or contaminant, within the meaning of Sections 101(22) and 104(e)(1) of CERCLA, 42 U.S.C. §§ 9601(22) and 9604(e)(1), at the Property.
17. The property owned or controlled by Respondent referred to in Paragraph 4 above is within the study area adjacent to, a facility:
- a. from which a hazardous substance has been or may have been released;
 - and
 - b. where entry is needed to conduct a response action.
- within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).
18. Entry to property owned at 3802 Humboldt Street by the agents, contractors, or other representatives of the United States is needed for the purposes of conducting a response within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

19. EPA's request for access to the Property has not been granted within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. 300.400(d)(4)(i).

V. ORDER

20. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including but not limited to conducting remedial action activities, including the removal of 12 inches of soil and the replacement of that soil with 12 inches of clean fill. EPA has designated the Army Corps of Engineers and their contractors, Project Resources, Inc, and Environmental Restoration, Inc., as its representatives solely for the purpose of obtaining access to the Property.

21. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

22. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

23. This Order shall apply to and be binding upon Respondent and its successors,

heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

24. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondent, or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

25. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$32,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as

a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health or welfare, or the environment arising from conditions at the Property, and recovery of the costs thereof.

26. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

27. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to this Property or any other site.

28. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

29. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours 9:00 AM and 4:00 PM at the EPA offices in Denver, Colorado. To review the Administrative Record, please contact Lynn Anne Farnsworth at 303/312-6487 to make an appointment.

VIII. OPPORTUNITY TO CONFER

30. The contractors conducting this work shall have a copy of this Order available at the property during the actions authorized by this Order. The lawful owner of such property may demand a conference upon a showing of such ownership interest at any time prior to the completion of said response action. Respondent may request a conference with EPA, to be held no later than two business days after Respondent's request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). A request for a conference or written comments or statements should be submitted to:

Karen S. Kellen
Enforcement Attorney (8ENF-L)
United States Environmental Protection Agency
Suite 300
999 18th Street
Denver, CO 80202
Telephone: 303/312-6518

IX. EFFECTIVE DATE; COMPUTATION OF TIME

31. Because of the immediate need to conduct the activities described above,

this Order shall be effective immediately upon signing of this document by the delegated officials of EPA. If the property owner demands a conference prior to the completion of the response action, work under this Order shall be suspended for two calendar days to allow for such conference. If a conference is requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

32. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

XI. TERMINATION

34. This Order shall remain in effect until Victor Kettlepper, Remedial Project Manager or his designee notifies Respondent in writing that access to the Property is no longer needed or until the completion of the response action.

SO ORDERED.

Date: 8/23/06

Michael T. Risner

Michael T. Risner, Director
Legal Enforcement Program

Date: 23 August 2006

Sharon L. Kercher

Sharon Kercher, Director
Technical Enforcement Program